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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 ALPHONSO CURTIS BROWNLEE,

11 Petitioner,

12 v.

13 STATE OF WASHINGTON,

14 Respondent.

CASE NO. 3:19-CV-05646-RBL-DWC

ORDER TO SHOW CAUSE OR
AMEND

15 The District Court has referred this action to United States Magistrate Judge David W.
16 Christel. On July 15, 2019, Petitioner Alphonso Curtis Brownlee, a pre-trial detainee housed at
17 the Kitsap County Jail, filed a federal habeas Petition pursuant to 28 U.S.C. § 2241. Dkt. 1. The
18 Court has reviewed the Petition and concludes the Petition is unexhausted and it is inappropriate
19 for the Court to intervene in this case. Therefore, the Court directs Petitioner to file a response to
20 this Order or an amended pleading by September 6, 2019.
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1 **I. Background**

2 In the Petition, Petitioner contends Respondent State of Washington violated his First,
3 Sixth, and Fourteenth Amendment rights related to his state court proceedings and criminal
4 charges. Dkt. 1.

5 **II. Discussion**

6 A. Exhaustion

7 “[A] state prisoner must normally exhaust available state judicial remedies before a
8 federal court will entertain his petition for habeas corpus.” *Picard v. Connor*, 404 U.S. 270, 275
9 (1971). Petitioner’s claims will be considered exhausted only after “the state courts [have been
10 afforded] a meaningful opportunity to consider allegations of legal error without interference
11 from the federal judiciary.” *Vasquez v. Hillery*, 474 U.S. 254, 257 (1986). “[S]tate prisoners must
12 give the state courts one full opportunity to resolve any constitutional issues by invoking one
13 complete round of the State’s established appellate review.” *O’Sullivan v. Boerckel*, 526 U.S.
14 838, 845 (1999).

15 Although there is no exhaustion requirement mandated by 28 U.S.C. § 2241(c)(3), the
16 Ninth Circuit Court of Appeals has held exhaustion is necessary as a matter of comity unless
17 special circumstances warrant federal intervention prior to a state criminal trial. *Carden v.*
18 *Montana*, 626 F.2d 82, 83-84 (9th Cir. 1980); *see Younger v. Harris*, 401 U.S. 37 (1971).
19 Petitioner fails to show he exhausted state court remedies by presenting federal constitutional or
20 statutory claims to the Washington state trial and appellate courts in the ongoing criminal
21 proceedings against him. Petitioner has also not shown special circumstances warrant federal
22 intervention in this case. Therefore, Petitioner must show cause why this case should not be
23 dismissed for failure to exhaust state remedies.

1 B. Younger Abstention

2 Petitioner's case may also be inappropriate in federal court under the *Younger* abstention
3 doctrine. Under *Younger*, abstention from interference with pending state judicial proceedings is
4 appropriate when: "(1) there is 'an ongoing state judicial proceeding'; (2) the proceeding
5 'implicate[s] important state interests'; (3) there is 'an adequate opportunity in the state
6 proceedings to raise constitutional challenges'; and (4) the requested relief 'seek[s] to enjoin' or
7 has 'the practical effect of enjoining' the ongoing state judicial proceeding." *Arevalo v.*
8 *Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018) (quoting *ReadyLink Healthcare, Inc. v. State Comp.*
9 *Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014)). Federal courts, however, do not invoke the
10 *Younger* abstention if there is a "showing of bad faith, harassment, or some other extraordinary
11 circumstance that would make abstention inappropriate." *Middlesex County Ethics Comm'n v.*
12 *Garden State Bar Ass'n*, 457 U.S. 423, 435 (1982).

13 First, Petitioner is a pre-trial detainee with ongoing state proceedings. Second, as these
14 proceedings involve a criminal prosecution, they implicate important state interests. *See Kelly v.*
15 *Robinson*, 479 U.S. 36, 49, (1986); *Younger*, 401 U.S. at 43-44. Third, Petitioner has failed to
16 allege facts showing he has been denied an adequate opportunity to address the alleged
17 constitutional violations in the state court proceedings. Last, Petitioner raises claims that would
18 effectively enjoin the ongoing state judicial proceeding. As the *Younger* abstention applies to
19 Petitioner's claims, Petitioner must show cause why this case should not be dismissed under
20 *Younger*.

21 C. Conditions of Confinement

22 The Court notes Petitioner may be attempting to challenge the conditions of his
23 confinement, not his physical confinement itself. *See* Dkt. 3, 4. If he is attempting to challenge
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1 the conditions of his confinement, Petitioner must file a civil rights action under 42 U.S.C. §
2 1983. *See Badea v. Cox*, 931 F.3d 573, 574 (9th Cir. 1991).

3 **III. Instructions to Petitioner and the Clerk**

4 If Plaintiff intends to pursue this § 2241 habeas action, he must file response to this Order
5 and an amended petition on the form provided by the Court. The amended petition must be
6 legibly rewritten or retyped in its entirety, it should be an original and not a copy, it should
7 contain the same case number, and it may not incorporate any part of the original complaint by
8 reference. The amended petition will act as a complete substitute for the Petition, and not as a
9 supplement.

10 If Plaintiff fails to adequately address the issues raised herein or file an amended pleading
11 on or before September 6, 2019, the undersigned will recommend dismissal of this action.

12 The Clerk is directed to provide Petitioner with the forms for filing a petition for habeas
13 corpus relief pursuant to 28 U.S.C. § 2241 and forms for filing a civil rights complaint.

14 Dated this 7th day of August, 2019.

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17 David W. Christel
18 United States Magistrate Judge
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